IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21353 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUNVANTIBEN W/O. MANOJBHAI MAFATLAL CHHARA - Petitioner(s)

Versus

POLICE COMMISSIONER AHMEDABAD & 2 - Respondent(s)

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Appearance :
MR VIREN G DAVE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 23/11/2005

ORAL JUDGMENT

1. Gunvantiben W/o. Manojbhai Mafatlal Chhara-petitioner-detenu has filed this habeas corpus

petition challenging the order of detention dated 03.09.2005 passed by Commissioner of Police, Ahmedabad city under the provisions of sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the 'PASA Act')which is illegal, null, void and also violative of Article 14,19, 21 and 22 of the Constitution of India. The present petition was filed on 05.10.2005 and my learned brother Hon'ble Mr. Justice A.S. Dave, issued RULE on 21.10.2005 which was made returnable after four weeks and that is why this matter has come up for final hearing and disposal.

2. Heard, Mr. P.D. Chudasama, learned Advocate appearing for Mr. Viren G. Dave, learned Advocate for the petitioner and learned A.G.P. for respondent in this behalf.

3. Learned Advocate for the petitioner has invited my attention to the order of detention dated 03.09.2005 passed by Commissioner of Police, Ahmedabad city-detaining authority under sub-Section

(2) of Section 3 of the PASA Act by which petitioner-detenu was arrested and sent to District Jail, Vadodara on the same day.

4. Learned Advocate for the petitioner also invited my attention to the grounds supplied in the said order of detention. As the grounds of detention four criminal cases have been shown as registered against the petitioner-detenu. First offence was registered as being C.R. No.280 of 2005 at Prohibition Station (North Division)dated 10.02.2005 punishable under Section 66B, and 65E,F of the Bombay Prohibition Act. In that case authority seized 20 litters of country liquor, 1400 litters of wash and 7 barrels. Second offence was registered as being C.R. No.294 of 2005 at Prohibition Station (North Division) dated 13.02.2005 punishable under Section 65F of the Bombay Prohibition Act. In that case authority seized 800 litters of wash along with 4 barrels. Third offence was registered as being C.R. No. 1173 of 2005 at Prohibition Station (North Division) dated 02.06.2005 punishable under Section 66B and 65E,F of the Bombay Prohibition Act. In that

case authority seized 9 litters of country liquor, 2800 litters wash and 14 barrels. Fourth offence was registered as being C.R. No. 5121 of 2005 at Naroda police station dated 04.07.2005 punishable under Section 66B, 65E, 81, 98 and 99 of the Bombay Prohibition Act. In that case authority seized 105 litters of country liquor along with one auto-rickshaw valued at Rs.10,000/-.

5. Learned Advocate for the petitioner further stated that in the order of detention it was stated that the petitioner-detenu is carrying on anti-social activities and on the basis of four registered offences she was termed as 'Bootlegger' within the meaning of Section 2(b)of the PASA Act. It was also stated that as said bootlegging activities of the detenu are dangerous and affecting maintenance of 'public order' and 'public health', order of detention has been passed.

6. Learned Advocate for the petitioner has further stated that on the basis of four criminal cases registered against the petitioner-detenu, she

cannot be termed as 'Bootlegger'. In support of this, learned Advocate for the petitioner has placed reliance on the judgment of the apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491. Learned Advocate for the petitioner has also placed reliance on the Division Bench judgment of this Court (Coram: Actg. C.J., C.K. Thakkar & K.M. Mehta,J.)in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Others reported in 2000 (1) GLH 393 and also on Division Bench judgment of this Court in L.P.A. No.223 of 2000 (Coram: M.R. Calla & R.R. Tripathi,J.J.) decided on 22nd August, 2000 in the case of Ashok Makwana Vs. State of Gujarat. He has also relied on a recent judgment of this Court in S.C.A. No.20420 of 2005 decided on 15.11.2005 in the case of Rajubhai Pratapbhai Panpatil Vs. Commissioner of Police, Surat City (Coram: K.M. Mehta,J.).

7. Heard, learned A.G.P. for respondent-detaining authority and he has tried to defend the order of detention as well as grounds stated therein.

8. In view of the aforesaid facts and circumstances of the case, this Court is of the view that in this case only material remains is four criminal cases registered against the petitioner-detenu and on the basis of that it cannot be said that activity of the detenu has become a threat to the maintenance of 'public order' and 'public health'. The offence committed by the petitioner pertains to prohibition to which I have already made reference in my earlier part of the judgment. Mere involvement of petitioner in bootlegging activity may not amount to dangerous activity by detenu and mere mention of them unless supported by any material cannot be said to be material and germane for the purpose of arriving at subjective satisfaction that activity of petitioner is prejudicial to the maintenance of 'public order' and 'public health'.

9. I have heard learned Counsel for both the parties and after perusal of the record, I am of the view that the detaining authority has passed the order of detention without there being any credible

or cogent material on record in this behalf. I have also considered factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also in view of the judgment of the apex Court in the case of Piyush Kantilal Mehta(Supra)and also Division Bench judgment of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki(Supra)and another Division Bench judgment in the case of Ashok Makwana(Supra) and also the recent judgment of this Court in the case of Rajubhai Pratapbhai Panpatil(Supra)the order of detention cannot be sustained and deserves to be quashed and set aside.

10. In the result, this petition is allowed and order of detention dated 03.09.2005 passed by Commissioner of Police, Ahmedabd city is hereby quashed and set aside. Gunvantiben W/o. Manojbhai Mafatlal Chhara-petitioner-detenu is, therefore, ordered to be set at liberty forthwith if she is not required in connection with any other case by the authority. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K.M.MEHTA,J.)

Umesh/